IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 291 OF 2004.

Ramchandra Kondiba Khomane. ... Applicant.
Versus.
State of Maharashtra & anr. ... Respondents

Shri Milind Deshmukh for the Applicant.

Ms.S.D.Shinde, A.P.P. for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 4th July, 2005.

P.C.:

1. By order dated 22nd November 2004 this Court directed that notice issued to the Respondent No.2 shall indicate that the Respondent No.2 will have to show cause as to why sentence imposed by the Court below qua the Applicant should not be reduced to one of already undergone and by imposing appropriate compensation which will be paid by the Applicant to the Respondent No.2. Office noting shows that the Respondent No.2 is duly served. Accordingly on 29th June 2005 I had taken up this application for final disposal.

2. The Applicant is the original accused. The accused was prosecuted on allegation that he has committed offence punishable under section 326, 504 and 506 of the Indian Penal Code. The learned Judicial Magistrate First Class acquitted the Applicant of the offences punishable under sections 504 and 506 of the Indian

Penal Code. However, he convicted the Applicant for offence punishable under section 326 of the IPC. In the appeal preferred by the Applicant, the learned Addl.Sessions Judge, Baramati, came to the conclusion that the offence committed by the Applicant is punishable under section 324 of the IPC. Therefore, the learned Additional Sessions Judge partly allowed the Appeal by directing that the conviction of the Applicant shall be treated as conviction for offence punishable under section 324 of the IPC instead of section 326 of the said Code.

3. The Respondent No.2-complainant is the cousin of the Applicant. The case of the prosecution is that the Respondent No.2 on 23rd April 1994 had gone to fetch water from the well situated in the field. He was returning from the well through a footway passing through the land bearing Gat No.473 situated at village Jalgaon-Supe. At the time when the Respondent No.2 was going through footway his nephew Navnath was also present. The Respondent No.2 told the Applicant not to plough the common place which was used as a way for approaching the field. There was an exchange of words between the Complainant and the Applicant. The allegation is that the Applicant gave abuses and threat to the Complainant. The allegation is that immediately thereafter the Applicant/accused assaulted the Complainant with a sickle on the backside of his head as

a result of which the Complainant sustained injury on his head. The defence of the Applicant appears to be that the Complainant was carrying an electric motor and iron angles on his head and while carrying the material he slipped at the spot and fell down and sustained injuries from electric motor and iron angle on his head. Another defence was that the complainant fell down on the plough and blade of the plough hit on his head. The learned Magistrate found that the Complainant had suffered three incised wounds on the head which were caused by a sharp cutting object. The learned Magistrate convicted the Applicant for offence punishable under section 326 of the IPC.

4. The learned Addl.Sessions Judge has recorded a finding that this was not a case where the Complainant has suffered any fracture. The learned Judge rejected the argument that the injuries suffered by the Complainant are under clause 8 of section 320 of the IPC. After considering the medical evidence the learned Judge held that the offence was punishable under section 324 IPC.

5. The incident is of the year 1994 and the Applicant has already undergone imprisonment for about 11 months. The only question which is canvassed before me is whether the learned Addl.Sessions Judge ought to have reduced the sentence considering the fact that he found

that the Applicant was required to be convicted for offence of lesser gravity. In the facts of the case before me, it appears that the incident took place as a result of dispute between the cousins. The dispute essentially appears to be about the property. the Complainant has not suffered any fracture or any real serious injury. The injuries are in the nature of three incised wounds on the backside of the head. The sentence awarded by the learned Magistrate while convicting the Applicant for offence under section 326 was two years with fine of Rs.3000/- and in default of payment of fine S.I. for three months. While holding that the offence was under section 324 of the Code, the learned Sessions Judge has not at all considered the question as to what should be the proper sentence. In my view considering the facts and circumstances of the case, the sentence of 11 months undergone by the Applicant will be appropriate sentence for the offence committed by him. The Applicant has already deposited the fine amount. Out of the fine amount of Rs.3000/- a sum of Rs.2000/- can be paid to the Complainant Baban Gulabrao Khomane by way of compensation.

8. In view view of the matter, the impugned Judgment and order is modified by the following order:

(i) The conviction of the Applicant for offence punishable under section 324 IPC

is confirmed. However, the sentence imposed on the Applicant is reduced to the period of imprisonment which the Applicant has already undergone.

(ii) Out of the fine amount of Rs.3000/- a sum of Rs.2000/- be paid to the Complainant by way of compensation.

(iii) The parties to act on an authenticated copy of this order.

Judge.